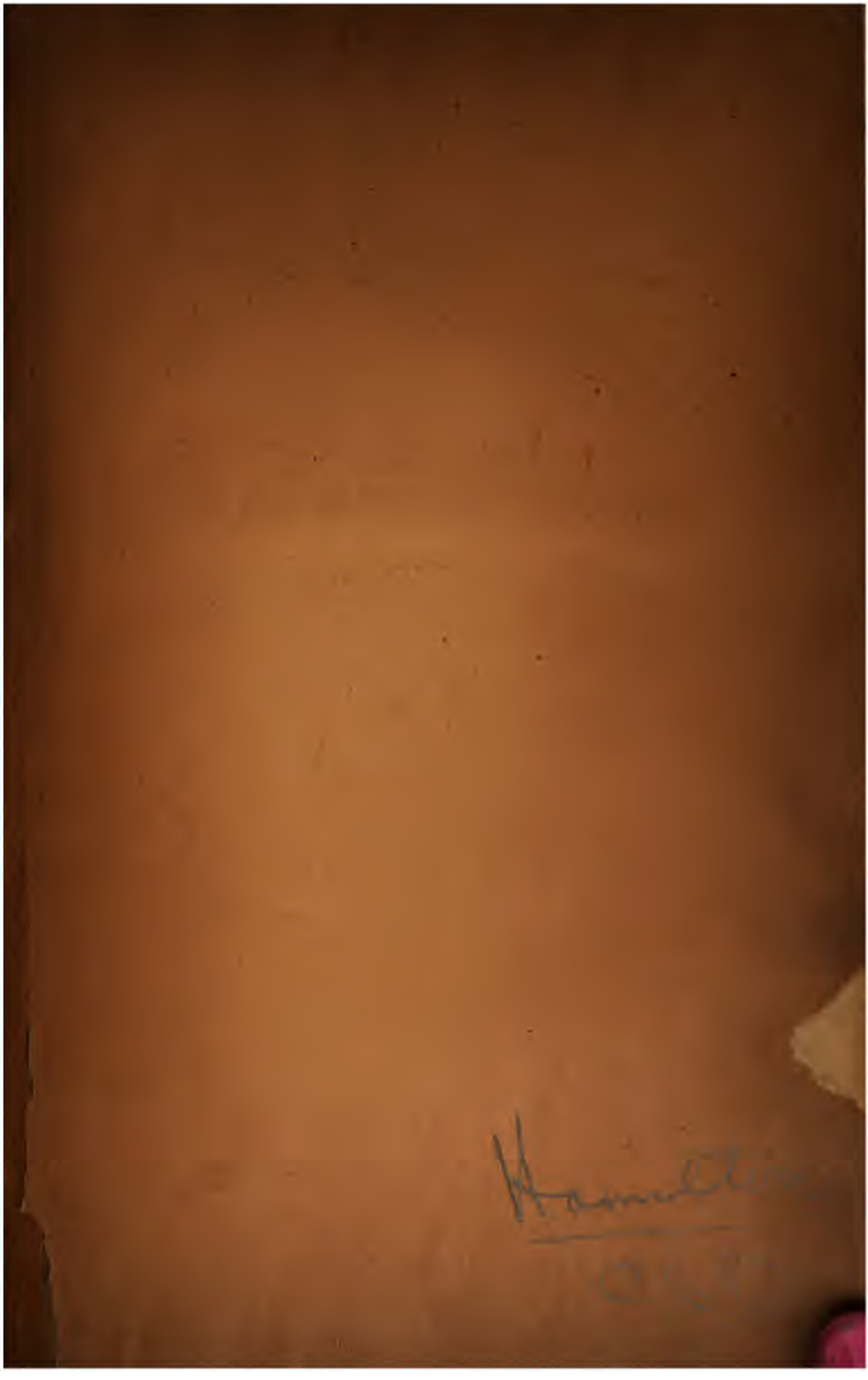

THE IRISH LAND BILLS

OF

THE LATE GOVERNMENT

CONSIDERED WITH REFERENCE TO SOUNDER LEGISLATION FOR ENGLAND AND IRELAND,

IN

A LETTER

TO THE

MEMBERS OF BOTH HOUSES OF PARLIAMENT.

BY

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THE IRISH LAND BILLS,

&c. &c.

NICE, *January*, 1853.

MY LORDS AND GENTLEMEN,

THE object of this Letter is to call your serious attention to the real nature of the four Bills brought in by the late Irish Government, for the settlement of the Land Question. It is true, that in consequence of political changes, these Bills must now be regarded as dead; but still, their dissection may prove instructive, as it may throw some light upon the general anatomy of a subject which will, no doubt, share a large part of your attention and responsibility during the present Session. When, too, we recollect, with what high-sounding praises these Bills entered upon life, and with what high hopes they may, therefore, have been regarded, this *post-mortem* examination may be consolatory to some, as it will show, that they really contained faults and failings of constitution, which would, under any circumstances, have brought them to an early—though not an untimely—end. Whatever merits they may have possessed as to some particular functions, you cannot examine them closely, without coming to the conclusion, that many of the principles

upon which they were based were calculated to embarrass rather than to facilitate the growth of a sound relation of Landlord and Tenant.

The demonstration of this proposition will be my first object. When, however, I remind you that it was very hastily asserted in one place, and re-echoed in another, that a measure designed by Sir William Somerville and me for the same general purposes—the outlines of which I have already made public—was "prepared upon a Book"—that published by Messrs. Ferguson and Vance, but which is now claimed by Mr. Napier, the author of these Bills, as recording his labours and enunciating his views—you will not think it out of place if, as we go along, I point out some few indications that that measure is not, in any essential feature, conformable to the principles assumed for those Bills, or advocated by that Book—principles which, strange to say, diverge widely from each other. With this, however, I have now nothing to do. I would here only commend a careful perusal of the Book to all who wish to discover the shortcomings of the Bills. I would also, for the same purpose, commend to their notice the very able and enlightened pamphlet of Mr. R. Longfield, upon assimilating the law of Landlord and Tenant to that of commercial contracts,—whose name the Dublin University Magazine with reason regrets that the operators upon these Bills have not connected with the subject—but whose pamphlet preceded the Book, and in which it appears to me, that nearly the same views were expressed, but in a far more bold and practical shape. Along with these, we

have the sensible views—not as to the existing nature but as to the proper objects of the law—occasionally put forth by the Society of Friends, a body ever throwing up signals of its onward progress in opinions of sound policy and in feelings of true benevolence, but whose views would be anything but advanced by a set of Bills which might be fairly entitled—Bills to complicate contracts, and to impede voluntary action.

My object, however, is not to compare the views or the originality of authors, but to vindicate a measure, which I believe to be based upon sound principles, from the charge of being at all like Bills, which I believe to be based upon unsound principles, and to show that it stretches far and away beyond any of the views expressed by any of the publications referred to. I am satisfied that that measure would secure a far larger amount of benefit to the Tenantry class, and a far larger amount of benefit to the Landlord class, without reciprocal wrongs and sacrifices, than would be attained by any plan hitherto proposed; and yet it contains little or nothing original, except that it largely develops and simply applies approved principles of law, and proposes to give to equal justice its fullest measure of efficiency. I do not think that originality of any other kind would be its best recommendation—quite the contrary.

In comparing the two plans, it would, of course, be impossible to do more here than touch upon those primary principles which determine the true character of each. Two machines which have the same general

object and the same subject matter must of course coincide in many of their secondary functions. We can here only consider such of the former as may give a particular effect and application to the latter.

The first general objection which pervades all these Bills is, that they appear to have been conceived in a spirit of blind deference to existing law, rather than to the interests of those for whom the law is required. Everywhere they betray an oversight of that which is really wanted for those who labour beyond the precincts of our Courts of Justice. In this they resemble some of the doings in the days of Swift, which, though "not a bowshot from the College," were still "half the world from sense and knowledge." Not that they are otherwise than very sensible and very knowing in matters of law. They overflow with learning. Their margins are inundated with all the leading cases of the late John Doe *versus* the late Richard Roe —which fixed the intentions of the Legislature in times gone by, and which it is proposed shall guide its course in times to come. You will, of course, with this view, study these cases deeply. But still these Bills are very defective in a knowledge of that which is really required for the practical and beneficial management of landed property. In this respect, their preparation by chamber lawyers, upon old statutes and law-books, in the confident persuasion that the result was what was really wanting, is suggestive of a story told half a century ago of a Vice-Provost of Dublin University, not very celebrated for his knowledge of what passed in the fields, who, having captured a swallow in the Col-

lege Library, came—after much study of Buffon and other naturalists—to the sage conclusion that it was a crow. The present case yields the same moral, though its facts are reversed. "Mutato nomine de illo fabula narratur." The bird of ill omen has been mistaken for the bird of sunshine and hope.

The next general objection which arises to these Bills is, that we have four to do the proper work of one. To say nothing of many other inconveniences of a fourfold scheme, it would seem, in the matter of language alone, to be almost impracticable to adjust the several parts of each, so that they should act in perfect concert. Why we have in these Bills no less than four different glossaries—one for each—giving different significations to the very words upon which the operation of the Bills depend! Take, for example, those which express the parties most concerned—the Landlord and the Tenant—and recollect that it is the persons so designated who are to have the rights and be subject to the obligations which are created not solely by each particular Bill, but by the combined operation of all. Endless confusion must be the result. The word Landlord has actually five distinct meanings, whilst some of the Bills even leave it to the Court of Chancery to determine who really is a Landlord. This arbitrary transmutation of Irish Landlords and Tenants—this knocking them about from Bill to Bill—is really too bad. Much as we have heard of Irish Landlords and Tenants, we shall soon not know what the terms mean. As for the future historian of the Land Question, he will in vain look back for some

clear contemporaneous ideas of them in these early records of the national code. He will, however, discover no more there than that Landlords were sometimes the actual owners of land — sometimes any recipients of rents—sometimes only reputed owners, or the receivers of rents for others—and sometimes that they were superseded by incumbrancers—nay, that sometimes they were only to be found in the Court of Chancery. Nor will he find that the Tenant has been treated with much more personal respect. He will see that though he was sometimes the person in occupation of lands, or entitled to the possession of lands, he was sometimes only the person who was then lately entitled to such possession, and sometimes one having but the smallest possible amount of tenure—that from year to year—nay, that sometimes he was a person wholly overlooked —not even defined by the Bill. In short, alike hereafter as now, we shall have much speculation, both as to the meaning of these and of almost every other term used in the Bills.

But, looking to the advantages of well-defined language, whether to the Legislature in making laws, or to the people in understanding them, these Bills are lamentably defective. There is no truth in the science of mind more certain than that words are the great instrument of thought. It is by words that we acquire complex ideas, as well as by words that we convey them to others. It is, therefore, upon the clearness and precision of words that the clearness and precision of our own conclusions, and the convictions of others, must depend. We have a familiar illustra-

tion of this in mathematical science, where, by adopting at the outset simple and known terms, we proceed by the constant elimination of variable quantities to results, which would otherwise be far beyond the reach of our faculties. But hardly one technical term in these Bills is invariable, or represents a constant quantity. The consequence is, that it would be beyond the discriminating powers of any ordinary mind to master a clear view of all the real results which these four Bills would produce, if passed into law. The difficult Problem of the three bodies would be a more easy one to the astronomer than the problem of the four Bills would be to the Legislature. You would have the same difficulties in estimating the forces from within and the forces from without, necessary to keep such erratic objects together; or in calculating their joint or separate attractions—their mutual disturbances—their unequable description of areas—their irregularities—their perturbations—and all the other elements, which must be taken into account if we have a *System* of laws instead of a *Unity* of law. Your task and your responsibility would be strictly proportioned to the fractional nature of the scheme submitted to you. To obtain a single result from such a number of Bills would be fully as miraculous a result as the dream of the three kings.

The best test by which to try the merit of these four Bills as a code—that which they claim to be—would be to cut them up, and to put their several kindred sections all together into one Bill, under the title of that which professes to govern all. What a

mess you would have! Yet this would only be to do for the Bills what the Bills would themselves do for the law. In the one case the confusion would meet your eye, in the other it would remain behind the scenes. This is the invariable lot of fractional legislation—difficult to construct and difficult to apply.

It is not, however, necessary only to aid the Legislature in making, and the Judicature in applying, our Laws. We want something more accessible than that which educated minds can just reach. We want to bring our laws to the level of popular understanding—to adapt them to popular and public ideas, so that they may be understood by all, and thus become a visible guide, and not merely an invisible control. We never shall attain this desirable end until we construct our laws upon the clearest ideas, and express them in the simplest language.

A want of unity in purpose and of simplicity in language is not, however, the only objection of the same sort which exists to these Bills. There is the want of completeness still to be noticed. They do not fulfil their title of consolidating "the law" of Landlord and Tenant. We shall hereafter see that they do not contain even the whole of the Statute Law. My complaint here is, that they do not take up the Common Law—that they are to derive much of their energy, not from within themselves, but from extraneous sources. You will observe that the Landlord and Tenant Bill provides that a reversion shall be deemed to exist in every case—that rights of entry shall be deemed to exist in certain cases—and that all old remedies shall

be preserved. Now what does all this mean, but that the law is still to float upon that medium, the depth of which is known to the profound lawyer alone?

It may sound very captivating to announce that the law of Landlord and Tenant is to be assimilated to that of commercial contracts. But every hope of an approach to the greater simplicity of the latter is afterwards dissipated by the discovery of the above, and several other small, but significant, provisions of the same kind which are scattered through the Bills. What is the great advantage of adopting the form of a simple contract, if behind this we leave the principles by which it is to be governed the same as before? You may like the idea of substituting the simpler laws of trade for those of feudal origin, as the breeze with which to fill the legal sails; but nothing of the kind has been projected by these Bills. There would be no change of wind. They would merely put the ship about, and bring all the old influences from the regions of tenure and service to bear but upon the one side instead of the other—only causing the vessel perhaps to shift her ballast, and to run somewhat nearer to the rocks.

Here then, at the first start, the Bills differ widely from the measure prepared for Sir William Somerville, which proposed to embrace within itself every principle of right or action necessary to govern the relation of Landlord and Tenant, under all the various aspects and varieties of its existence. I would urge you to weigh well the idea involved in these cursory remarks. It is one of vast importance. What a satire is it not

upon our legislation, that at present the appearance of our patch-work Acts is watched for, not to praise their merits, but to exhibit their defects! Some one quickly produces a digest of their parts, bringing indeed those which are relative into relation, but oftener contrasting those which are inconsistent, or trying to reason over their blunders, or to reconcile their uneven action, or to estimate the exact degree of danger to which the public interests are exposed by them. This nursing task sometimes proves a very good thing for a young lawyer. These Bills would have made the fortune of any intelligent young man, who was lucky enough first to receive them at their birth. But surely an Act ought not to require such aids! It ought to be its own digest—its own expositor. It ought, by its unity and its completeness, to exhibit its own consistency and safety—so that he that runs may not only read, but understand.

The usual process has indeed been here reversed. The customary digest *a parte post* has been forestalled by a digest *a parte ante.* The author of the Bills has thought it necessary to send them out with very flattering letters of introduction to the public. For a knowledge of the reason why this unusual step was taken, we are indebted to the writer of an article in the last Number of the Dublin University Magazine, who says: "Mr. Napier has considerately had them printed as pamphlets in a short and concise form, stripped of the unintelligible law jargon, which even lawyers scarcely understand." But why were these Bills so overlaid with *unintelligible law jargon* that this process of strip-

ping became necessary? Could they not have been made naked without being ashamed? Why were they not themselves considerately made plain to all whose interests are at stake? We are, indeed, told, that by this means "many a practical man" has been enabled to understand them. But are these practical men quite sure that it was the meaning of the Bills, and not of the pamphlets, which they have understood? Let them recollect that the pamphlets are but laudatory accounts of the *effects* which it is said or supposed that the Bills will produce. How do they know that these effects have been rightly estimated? May they not contain principles which the pamphlets do not disclose at all, or which they disclose in a wrong sense. A single instance will suffice to show that they are indeed but blind guides. The pamphlet which treats of Cottier tenantry contemplates only holdings of future creation, and for short periods. It then announces that the Landlord is to keep these Cottier holdings in repair—a most desirable obligation if it were but rightly superinduced, as we shall hereafter see. But how does the Bill do it? The 51st section says, that "every Landlord of any *dwelling-house* or *place of abode*, or Cottier tenement" of a certain value, is either to repair, or to lose his rent. There is nothing to confine this either to cottages or to future lettings. Fancy the pious Landlord, in the common case of existing leases of houses in the purlieus of towns, obliged to study the comforts of the inmates not only of low public-houses but of houses of worse repute, and forced to keep them in good condition and repair! Even so, their inmates could

always manage such a habit of broken windows as would enable them to live rent free. The breakage of so many panes of glass would always stop as many gales of rent. In vain we turn to the glossary to see whether this unpleasant obligation may not be confined to the *immediate* landlord ; but the term is there rather expanded than contracted. The responsibility, therefore, runs up through the whole chain of middlemen—fastening itself upon every derivative interest. Tradesmen, squires, peers—nay, bishops themselves, would all be involved. The rule, from Tartarus up to Olympus, would be—no repairs, no rent. This is the legal effect of the Bill ; but is it the effect attributed to it by the pamphlet ? Let the practical men who have been so busy upon these pamphlets but follow me to the end of this Letter, and they shall have some further facts which will suggest the idea, that, after all, they may have been deceived. Let them not softly suppose, that it is the pamphlets which are to become law. That is only claimed for the Bills, which the friendly Critic admits to be in language scarcely intelligible to a lawyer. But if so, how are Landlords and Tenants—how are those of the Legislature—who are not lawyers, to understand at all what is really going on? This is the first question which these practical men ought to ask themselves.

We must now pass on to the more particular features of the two plans before you—not taking the several members of the general subject as scattered through the Bills, but following them in that natural order in which they grow one out of the other, and an

observance of which will produce the clearest thoughts, and thus the clearest understanding, of what was proposed to be done. Some of the defects which I have above noticed will be more fully exemplified as we descend into details.

The first natural head of the general subject is, of course, the power to grant Leases for the creation of Tenancies. Here, however, the Bills cover but a small portion of the space occupied by the measure designed by Sir William Somerville and me. This proposed to take up the Leasing function along the whole range of property, from one end to the other; and, having endued it with extreme simplicity, to render it the basis of all rights and obligations growing out of the relation created by its exercise, under every variety of circumstance. The Bills, on the other hand, touch the subject only as it concerns partial owners—leaving all other owners to their own inventions, or rather to the inventions of their lawyers drawing upon the old common law for all that power of action which would prove far more satisfactory and safe, if drawn from a new Statute.

Let us now see how the particular branch of the subject, which embraces partial owners, has been treated. To give to these owners such an extent of power as the good of the State requires that they should have, is the object of the first half of the Leasing Powers Bill—by far the least objectionable of the four Bills. In general purpose, arrangement, and language, it calls to mind the Estates Leasing Bill of 1850, though in many essential respects different. It would seem as if

the rather divergent views of Sir John Romilly and of Mr. Napier, as expressed in his Book, had been brought by that new and ingenious instrument, the stereoscope, into a single image of somewhat bold and prominent outlines, but at a considerable sacrifice of the perspectives appertaining to each. As far, however, as it goes, the Leasing Powers Bill—with some corrections—would not be a bad patch upon the old law, that is, if we are to continue our present wretched system of patch-work legislation. In their practical provisions, as to this part of the subject, this Bill naturally coincides a good deal with the measure prepared for Sir W. Somerville, because they had the same antecedent, and they have the same general purpose—the liberation of land to nearly the same extent, and for nearly the same purposes.

They agree in exempting the persons by whom the powers are to be exercised, from the interference of incumbrancers. But the Bill seems to shut out creditors too quickly and too peremptorily. The just rights of these require that these powers should not have full force against them, in case they should have commenced proceedings for a sale, before the date of the granting of the lease, or within six months afterwards. Without this saving provision a door would certainly be opened to much fraud.

With some material exceptions they agree as to the persons to whom it is proposed to grant new powers. The Bill, however, appears to be most in fault in giving these powers to some who ought not to be intrusted with them, whilst it sadly and greatly fails

in not giving them to others, to whom they ought, upon every principle of policy, to be extended.

The first great fault of the Bill is, that it intrusts the exercise of these powers to a Receiver under the Court of Chancery. This appears to be a proposition in the very teeth of the Report of the Receiver Committee. The whole current of evidence, too, given before that Committee, went to show the inexpediency of enlarging any powers of leasing and managing in favour of a Court which is incapable of exercising them beneficially. The proposition now made is the more startling, as Mr. Napier's Book reminds us that Sir Edward Sugden had given it as his opinion to that Committee, that it was inadvisable to enlarge such powers, because, amongst other more weighty reasons, "if the Court were enabled to exercise too much the powers of an independent owner, parties would, perhaps, become too well satisfied with its management, and leave property in Chancery indefinitely." Whether this provision would have this particular effect, is another question; but, at all events, do not let us hold out that which any one may consider to be a temptation to the indolence or interest of Irish Landlords. There are far more serious reasons than the above why it would be ruinous.

The second great fault of the Bill is, that it enables an incumbrancer to exercise the same power as an owner. Sound policy advises us to ignore the interference of creditors—to give them indeed their right of sale or receipt of rents—but to refuse them the privilege of becoming the managers of property. Any law

which hesitates to maintain the permanent owners as the practical managers of property would be a law far in arrear of public opinion and national prudence. We have come to the time when the principle of the Incumbered Estates Act must be made that of the Court of Chancery. It would be so now if the practice of that Court were equal to its profession. The public will never rest satisfied until its procedure is made so rapid that an estate cannot remain long under its influence. If it does go in at one door, it must go quickly out at the other. The estates of lunatics, minors, and annuitants, of course, require a special treatment. But with respect to creditors, do not let us take a retrograde step, and legislate upon the basis of a very objectionable system of incumbrances and receivers.

The failing of the Bill, of which I have spoken, is its not being made applicable to a very large class of real owners. You will observe that it contemplates the different kind of owners, and not the nature of the interest in which their ownership exists. Hence no power is given to any owner except to one whose particular estate is created by limitation, either out of the fee or out of a perpetual interest. The system is therefore confined to primitive interests, whilst a large part of Irish proprietorship exists in derivative interests, which would thus be excluded from the proposed benefit.

Take the case of the absolute owner of an interest created out of the fee by a lease for 999 years. Why should not he have equal power to lease as the owner of an estate for 61 years, created out of the fee by set-

tlement, as proposed by the Bill? Is not his interest a better subject for increased powers than that of a judgment creditor put into possession of an estate for a very temporary purpose, but to whom the Bill gives the power to lease? In this point of view the Bill is inconsistent with itself. But it is clearly wrong in not applying the power, whenever we may find a fit subject for its exercise, as we descend through successive interests from the fee to the lowest Landlord. The Bill would only apply in the upper regions of ownership, and not in the region of occupancy. In fact here, as in many other respects, it is wholly in the clouds.

Nothing of this sort can be complete for its purpose but a simple system, which shall proportion the owner's power to the duration of his estate, whether such estate shall exist in the fee or in an interest derived from the fee—so as to enable every owner, who is next in position above the cultivator, to give to the latter an interest which should be safe for a reasonable period.

Even in the case of estates by limitation for years, why should we stop at 60 years, as proposed by the Bill? Why should not such an owner for 50 years be allowed to lease for 21 years, or for any other term less than his own estate? The best interests of the State demand that the power to lease should be made co-extensive with property itself in all the shapes and degrees of ownership to which it is subject.

The next feature of this subject which attracts attention is the mode in which it is proposed to give

security of tenure to the Tenant. Here the Bill before us follows Sir John Romilly's Bill, though at a very respectful distance. The 21st section only gives validity to the lease against persons deriving under the same title. The utmost effect of this would be to fortify the lease against the remainder-man or successor in estate—a thing already done by the Leasing Power, if correctly exercised. It would reach no further than to confirm an informal lease. It would effect no substantial saving purpose. It would do nothing for the case of a lease for 21 years, granted by the partial owner of an estate created out of a lease for 999 years, and which would now be destroyed by the failure of that lease. Suppose that this were to be accidentally made void—which is always possible—the occupying Tenant would at once be ousted. Then, if the field of the Bill were enlarged, as it ought to be, so as to take in successive derivative interests, the casual destruction of any one of these would bring down ruin upon the occupying Tenant, who would be innocent of the accident, and whom all wish to save.

In contrast with this, the measure prepared for Sir W. Somerville followed Sir John Romilly's Bill, in giving to the Tenant protection, not only against persons claiming under the same title, but against those claiming under a paramount or contrary title. The Book indeed has denounced this proposition as at best "an inartificial mode" of securing compensation—*inartificial*, of course, meaning that which is done by the straightforward force of an Act of Parliament, as distinguished from that which is done by the roundabout force

of the common law—the direction in which both Bills and Book continually drift. But that is not the object of this principle. Its true purpose is to secure to the Tenant that safety of tenure which will prevent the occasion for compensation from arising. The artificial efforts of Lawyers have hitherto failed for this purpose. Why should not Legislators have their turn now, and adopt this mode—no matter how *inartificial*—of securing to the occupying Tenant protection against those casualties which lie beyond, as well as against those which lie within, the bounds of what is called the same title. It is as much due in the one case as in the other. Its concession would do harm to no one, for the Tenant would continue to pay the full original value of the tenement in rent. Any subsequent increase of value, being of course due to the Tenant's own industry and capital, ought not to be regarded otherwise as his own, so far as it may be practicable to secure it to him. The best security would be this validity of lease.

In connexion with this subject, I must here notice another great difference between the modes in which the two plans propose to obviate the inconvenience of a defective exercise of the leasing powers, whether statutable or under settlements. The Bill contains a string of provisions, all coquetting with contemporaneous powers, applying the old law as to total or partial confirmations by successors in estate, or helping out the Statute by co-existing powers, or defining the effects of subsequent accruals of title, and so on—all fruitful sources of doubt and litigation. A bold plunge is indeed made at the object, by the clause which

converts an informal lease into an equitable contract, and gives the Court of Chancery the power to realize the intent of the parties. This may be a very necessary safeguard for some purposes. There is an analogous provision in the general measure, but with a very different subject matter. I fear that the subject matter under this Bill would give constant occasion for its use, as the supply to litigation would be both abundant and inviting. But in the other case, its use would be rare, from the adoption of a very different mode of obviating defective exemptions. There the statutable powers were made to take the place of all other powers—to over-ride them in all respects, except as to the length of the term which was allowed, if in excess. In the next place, the leasing transaction was rendered so simple, that it left no room for informalities. Prevention is much better than cure. But where cure is really requisite, as in the case of existing leases under defectively exercised powers, it administered the most effectual remedy, by enabling all owners to grant new and safe leases under the new law, instead of those which might be old and unsafe under the ancient law. The result of this would probably be an extensive transmutation of Irish Tenancies from the old to the new tenure, leaving all their technical defects behind them. We shall best get rid of effects by first getting rid of their causes. But, with this view, we must bring the subject forth into the light, from the dark recesses of the law. We must make it lucid to the eye, and smooth to the hand.

The conclusion which any one must draw from

these considerations is, that the measure prepared for Sir W. Somerville differs, in some of its most essential features, from the Bill to which it was alleged to have a resemblance—even in the branch of the subject where they most approximate to each other. It differs from it, both in the extent of its application, in the singleness of its purpose, and in the certainty of its effects. It differs from it still more in the simplicity of its operation. Its simple proposition was, that all owners of certain *estates*, existing in certain *interests*, should have power to grant leases for such terms as they might please, with this distinction of effect, that where such leases should not be in conformity with certain restrictions, they should be subject to be determined with the determination of such estates or interests; but that where such leases should be made in conformity with those restrictions, they should not be so subject, but should have the benefit of survivorship. This simple application of power only requires some control, according as it may be exercised by beneficial or fiduciary owners, and also some adjustment to the duration of their estates—all principles of the simplest management. It would adapt itself to its purpose, with that which is the charm of all good machinery—its simplicity—and with that which is the recommendation of all simple machinery—its safety. Its adoption is one of the secrets of the possibility of depositing the whole law of Landlord and Tenant within the compass of one short Act.

The Second natural head of the subject is the legal

mode of creating Tenancies. Here, whilst an *apparent* advance is made in the right direction, by declaring that the relation of Landlord and Tenant shall be founded upon contract, and that all Tenancies for definite periods shall be evidenced by a written document, we shall find that all *real* advance is nullified by certain subsequent provisions. I must, however, first notice some curious and significant circumstances, with which the above proposition is accompanied. It may be a startling fact, but not the less true, that the first four operative sections of "the Landlord and Tenant Bill," to which we now turn, actually establish the four principles of our old law, which are most opposed to the spirit of the times. Has no one yet remarked that, though it was announced that "all fictions had been abolished," the 3rd section places the whole proposed new relation of Landlord and Tenant upon a *fiction ?*—yes, upon a fiction !—and this in the very teeth of Mr. Napier's published speech, in which he says, that "he had abolished all those fictions which were remnants of feudal times." Truly may we say to him—"Verbisque decoris obvolvas vitium." It enacts that a reversion "shall be deemed to subsist in all cases in which there shall be an agreement by one party to occupy land under another"—that is, in every case,—whether it exists or not. Why, the Irish Landlords are said to have protested against these Bills, because, amongst other things, they are "to be divorced from their reversions." But this Bill gives them reversions even where they had none before ! I own that such a gift would not be a very profitable one ; but it is some-

thing, and they ought, in these times, to be grateful for small favours. What is it? It is the conductor, which is to bring back the old law of tenure and service—previously disclaimed—to bear upon a contract, which would, perhaps, be otherwise too simple. But this will not do. If we are to have the old law, let us have it openly, and not by a fiction. Fiction is bad for any purpose. Then the same section allows an *implied* contract—a dangerous source of litigation. Then, again, the 5th section declares that every overholding Tenant shall be *deemed* a Tenant from year to year—the old principle of *constructive* Tenancies. Beware of this, as it would, as it now stands, actually turn a weekly Tenant under a written agreement, into a yearly Tenant without one, because the Bill only requires a tenancy to be defined in writing at its first origin! Lastly, the 6th section declares that, in the absence of express words, every tenancy shall be *presumed* to commence upon the 1st of November. Thus in this age, when all wish to pursue real objects by real means, the chapter of the new Code, for "the creation, continuance, and determination of Tenancies," very quietly retains all the old evils of constructive or implied holdings—giving to some of them presumptive beginnings, to some presumptive continuings, and to some presumptive endings—and laying the foundations of the new tenure in a most unstable compound of fictions, implications, constructions, and presumptions of law. These are the true saving clauses of the existing law. They would add a hundred per cent. to the value of old law books. Where else are

we to find the principles which are to control and govern these unsteady provisions?

Disembarrassing our minds for the moment of these considerations, let us now see the sort of tenure which it is proposed to adopt. We have, then, no less than four different species.

We have, first, the tenure by indenture of lease, which is of course confined to the special tenancies to be created under the Leasing Powers Bill. We have next, a tenure of three different aspects, under the Landlord and Tenant Bill, for the area not covered by the former—that is, for by far the largest field.

The relation of Landlord and Tenant then is, by the 3rd section, "to be founded on the express or implied contract of the parties, and not upon any tenure or service," and by the 4th section, this contract is to be in writing, when it is to be for any definite period of time. Such is proposed to be the great working tenure of Ireland. But we shall presently see that nothing is done to make it so, and that those two sections would prove just so much waste paper.

The next species of tenure is to be the Cottier holding. The 2nd section enacts, that "where any Landlord shall appropriate any cottage, with or without any portion of land, not exceeding one acre, as and for a garden or accommodation to such cottage, at a rent not exceeding the rate of Eight Pounds by the year, without any lease or agreement specifying the term or period of tenancy, the holding shall be deemed a monthly one." Thus it is the Act, and not the Landlord, which is to create the Cottier System!

The fourth species of tenure is created by the words of the 9th section, that "every license to use any portion of land, not exceeding one acre, in the way of con-acre, shall, unless otherwise expressed in writing, be deemed to be made subject to an agreement, that the party granting such license may" do certain acts to enforce payment. Or, in other words, the law is to construct the remedial part of the con-acre system out of the supposition of an agreement—a fiction again!

Upon these two last provisions, any one may well ask, what are to be the *acts* of appropriation and license, which are here to raise a presumptive right against the Landlord in one case, and against the Tenant in the other. What is to be the legal meaning of these terms? In a grammatical point of view, it might be asked, is the appropriation of the cottage to be to the Landlord or to the Tenant? The Bill does not say. But these are only a few of the many evidences of that want of precision, both in thought and language, which marks these Bills. This is no useless criticism. Recollect that it is now proposed to turn over the whole relation of Landlord and Tenant into the law of commercial contracts—a law certainly more simple than that which comes of feudal origin, but one where every word will still be spelled, and every expression scanned, so as to extract all their possible meanings, and where legal meanings will have the preference. Do not trust it there, until you have first divested it of all connexion with its old associates. It will not do to hanker after two influences. We

must be off with the one before we are on with the other. The subject is really one of the plainest possible, if we only take it up in a right sense.

The objects aimed at through so much haze seem to have been, first, to have a written document for every tenancy, and then to attach to this tenancy certain obligations which usually exist between Landlord and Tenant. But why split this subject again into two? Under the Leasing Powers Bill, the agreement is to be in the old clumsy form of an Indenture. But under the Landlord and Tenant Bill, the agreement is to be in any form, but with permission to be in a certain form which was to have appeared whenever—if ever—the schedule of the Bill appeared. It is now of course impossible to know what was projected. But it is quite evident, from the complicated manner in which the subject of reservations and covenants has been projected by the Bill, that the form necessary to put them in force, or to modify their effect, would be very little, if at all, less complicated than the usual old form of lease. What do we gain then? Nothing.

It lies below the level of my present design to examine in detail the manner in which the establishment of statutable obligations has been attempted. I must, however, say, that these have been so scattered through the Bills, and so involved one within the other, and so incumbered by exemptions within exemptions, that it would be utterly impossible for any Landlord or Tenant to collect a certain idea of their mutual rights and obligations in any given case. The fact that there are no statutable reservations under the

Leasing Powers Bill, whilst some of the reservations and some of the covenants under the general Landlord and Tenant Bill would attach to Leases under the former Bill, illustrates the endless confusion which would result. No one could safely trust either Bill.

The proper application of the principle of statutable reservations and obligations is a problem of extreme difficulty. If rightly treated the results would be safe and useful; but without the clearest plan, and the simplest classification of the provisions, the system would be either useless or dangerous. In these Bills we have no uniform plan—no classification whatever. We have, too, a further cause of discord in this, that almost every attempt to establish an obligation is nullified by some other provision. Take at random the 49th and 50th clauses of the Landlord and Tenant Bill. The former makes it obligatory upon the Tenant to repair all Houses over a certain value, unless there shall be an agreement in the Lease to the contrary. If this clause were to have any effect at all, it would, of course, be to dispense with the usual covenant to repair. It therefore contemplates that all future Leases shall be without such covenants. But what does the next section say? It enables every Tenant whose Lease does not contain such a covenant, and whose house may, amongst other causes of ruin, be accidentally burned, to tender a surrender of the Lease and all arrears, and depart exonerated of all his obligations! This peril of property could only be obviated by the parties agreeing to throw the Act overboard, and to have all their rights and obligations painted, at full

length, by the most eminent legal artist at hand. This clause is therefore suicidal.

Such, however, would not be its most extraordinary effect. This relief clause is not only prospective, but retrospective. It is not confined to cases of occupation, but is applied to every existing Lease which may happen not to contain an agreement that the Tenant shall repair—of which many exist in districts once rural but now civic. In these altered times many a middleman would hail an accidental fire as his best friend. But most of the houses which would be accidentally burned down under this clause would, from the prevalence of the middle interest system, bring ruin of title upon many others. A box of lucifers would soon become the usual process of ejectment for whole rows and streets. We all know how difficult it has ever been to prove that arson was not spontaneous combustion.

Let any one turn from this scene of conflagration, and coolly examine all the other statutable obligations, and he will be sure to find that the principles of involution and counteraction—to say nothing of the fear of some other explosive clauses such as I have noticed—would reduce the whole system to one of inutility to the prudent, but of peril—if not destructiveness—to the incautious.

Under the Leasing Powers Bill, too, the subject of statutable reservations and covenants is treated quite differently, in point of simplicity and extent, from the manner in which it is treated under the Landlord and Tenant Bill. This alone would produce great confu-

sion. By the former Bill, the principle of Lord Lincoln's Act is developed, and some of the common covenants, with some of the usual reservations, are made statutable obligations. It does not, however, carry the principle to anything like the extent, or apply it with anything like the simplicity, of which it is capable. But in the better of the two forms in which it is adopted, it is of course only applied to tenancies under that Bill.

The same purpose is pursued by the other Bill, but not upon the same plan. It does something more as to reservations, but something less as to covenants. But if the plan is good for one tenancy, why not for all? If certain obligations may be so created, why not all? Then why have we an Indenture as the necessary form for one tenancy, whilst any written contract is to be a sufficient form for another tenancy, which is the same in all respects, except that the power to create the one comes from the Statute law, and the power to create the other from the Common law. The object is the same in both cases. Why not have a single form for every kind of tenancy, and establish all rights, reservations, and covenants, as a general law? It is easily practicable. Here again, the Bills and the measure diverge widely from each other, as to one of their four primary and most important functions.

Nor even in the Leasing Powers Bill is the principle laid hold of as it ought to be. Whatever the Bill creates as rights or obligations, it casts into the old shape of covenants and conditions; whilst the 28th Section directs upon them not only all the new,

but all the old remedies—the faults and failings of which are so notorious, and were so effectually criticised by the Book! But what is meant by assimilating the law of Landlord and Tenant to that of commercial contracts, if we are still to incumber it with principles quite unknown to the other? Where in the latter shall we find fictions of reversions and of right of entry—with the other refinements of the feudal laws still preserved by these Bills as conductors of old remedies? The characteristic feature of the law of commercial contracts is its simplicity—its unity—its reality—its adaptation of means to an end.

I pass over the subjects of assigning and subletting—of registering Leases—and of certain regulations as to rents, because they involve no great difference of primary principles. But I must say, that the absence of any provision as to public gale days—so useful in Scotland and so much praised by Mr. Napier's Book—appears to be a great and singular defect. There also appears to be a great want of clearness and comprehensiveness in the provisions respecting the payment of rent by assignees and over-holding Tenants, whilst those respecting the payment of rent by the occupying Tenant to mediate or head Landlords are deficient in that simplicity and smoothness which is necessary for their success.

I must, in connexion with this subject of Rent, say a word respecting the 16th Section of the Leasing Powers Bill, which suggests that the rents under agricultural Leases shall be subject to variation. Its meaning is very obscure. The marginal note says, that the

variation is to be according to the price of agricultural produce. But the Section itself applies to a change in the valuation of the tenement under any "general valuation," to be in force in Ireland. Does this mean the Poor-law or the Ordnance Valuation? I suppose the latter. But how often is that likely to vary within even the maximum length of an agricultural Lease? It is certainly not likely to vary very often, as its object is not to fix the value of a tenement at two different epochs, but to fix its value with reference to other tenements in the same county, for purposes of taxation applotment. If good at one time, it will, for this relative purpose, be good at every other time. It only aims at intrinsic valuations as the means of arriving at comparative values. With this view it seeks the value of the soil in reference to its powers of production. It might, in this way, afford a useful standard, for the present, to fix the first rent under a statutable Lease. If repeated in future years, it might be useful to re-adjust that rent according to the altered circumstances of future times. But it is wholly inapplicable to short agricultural Leases. What is sometimes sought for these is, that, as in Scotland, the rents shall vary annually with the price of the thing produced—upon a sort of share and share principle, between Landlord and Tenant. But to be just, we must make the rent of *pasture* land vary with the price of *meat*, and that of *tillage* land with that of *corn*. Any standard compounded of both would be clearly fallacious, as the returns collected by Mr. Griffith show, that, for

certain years, whilst the price of corn fell, that of meat rose. The elements of the standard might thus be *in equilibrio*, whilst the tiller was losing and the grazier gaining, or *vice versâ*. But the subject, simple as it seems, is surrounded with so many other difficulties than that of obtaining and applying a proper standard, that the policy of attempting to provide one in Ireland, even for voluntary adoption, is very questionable.

With respect to Cottier Tenants, the 51st Section appears both to violate the rights of property, and to promise much litigation. A Landlord is not to recover his rent unless he keeps the cottage in "good and tenantable *condition* and *repair*." The tribunal can, of course, easily decide upon repairs, because there is a standard of comparison. But what is to determine the exact condition, which may be satisfactory to the Tenant, but penal to the Landlord? Many a Tenant would rather have a bad house and pay no rent! This Section would never realize its purpose. The object is, no doubt, a good one, but the only way in which you could attain it justly, or at all, is by giving to the Landlord, who does maintain certain well-defined sanitary requisites, a more speedy remedy than you give to the Landlord who does not. Reward is a far more powerful agent than punishment. You can make it his interest to provide and preserve good houses, because you can thus make it safe for him to trust them to others. The increased ease with which the working classes in towns are now enabled to procure accommodation, since small tenements have been

submitted to summary jurisdiction, speaks much for its extension upon sound sanitary conditions.

I must round these remarks, under the head of the creation of tenancies, by noticing the fact, that no attempt has been made by either of these Bills to induce Landlords to grant leases or contracts in writing, whilst there is much of a contrary tendency. We have nothing but the dry enactment that the relation of Landlord and Tenant shall only exist under a contract in writing. We have nothing whatever to make that enactment work. The horse has been brought to the water, but who is to make him drink? How does Mr. Napier propose to make the Irish Landlords thirsty? It is said that the "good old Irish thirst" has disappeared along with the potatoes. But what is the use of this bit of dry legislative advice, if nothing is done to induce people to follow it? The only possible way in which this can be done is by establishing a system of discriminating remedies. But we have nothing of the sort applied here. On the contrary, though the power to distrain is confined by the 67th section to cases "as between Landlord and Tenant," that is, cases of written contracts, and the direct action for rent is confined by the 58th section to cases of leases, still the 59th section gives an equivalent remedy for use and occupation as between the persons concerned, without any reference to the relation of Landlord and Tenant, and the 98th section, as to ejectment for non-payment of rent, the main remedy, though it gives it to the "Landlord," has express words to apply it whether the land is held by agreement "in writing or not." Thus, as usual in

these Bills, all the most important provisions frustrate each other.

It is not, of course, to be expected that a great deal can be done by differential remedies, because you must not tie people up too much. But not a little may still be done to make it for the mutual interest of the parties that there should be a written agreement. It would not, indeed, be either wise or just to insist that every tenancy should be by writing, as some may not wish it, and others would neglect it, and we should thus open a door to confusion. The only just and wise way to bring the object about is by making it disadvantageous to depart from the public policy of having a lease in every case. This was worked out in several ways in the measure prepared for Sir W. Somerville. It was with a view to this that all holdings were treated as either tenancies or occupancies—the one being by writing, and endowed with certain attributes—the other being without writing, but endowed with attributes less advantageous to *both* parties.

We next come to the Third natural head of the subject—the right of property in additions made to the tenement after the commencement of the tenancy. Let us see how the Bills propose to adjust these rights.

With respect to those things which are usually called fixtures, or, in other words, things not very permanently fixed, and emblements, or, in other words, the crops unsaved at the time of the determination of a tenancy, the two schemes before you differ in manner more than in matter. There are, perhaps, some slight differences; but they both take up the main

principles established by the recent Act of 1851, which extended to the *agriculturist* the privileges before enjoyed by the *trader*. It is, however, important to remark, under this head of fixtures, that Mr. Napier's Bills take no notice whatever of the Act for the Registration of Trees. They are, therefore, either defective as consolidation Bills, in omitting several most important Statutes, or they are intended to sweep away the existing system. I can scarcely think that this last was intended, as those Acts were so much praised and recommended for consolidation, and the only possible substitute for them would be to bring trees under the head of improvements. The Bills, however, only recognise coppice-wood, and not trees in general. The non-preservation of this system would, no doubt, surprise as well as injure those who have registered trees under those Acts—not a great many certainly—but still not a few.

We next come to things of a more permanent kind than either fixtures or emblements, and here there are no less than three Bills to regulate what could be done far more satisfactorily by three sections of one Bill. We have one Bill for voluntary agreements—a second to give compulsory compensation to the Tenant against his Landlord—and a third to give the Landlord compulsory compensation against the Tenant—for that is the true meaning of one of the Bills, as we shall hereafter see.

The very important subject of voluntary agreements is disposed of by the last half of the Leasing Powers Bill, but in a most imperfect manner. In the first place, no provision whatever is made to facilitate

any proprietors, in making voluntary agreements, except those who come under the description of partial owners! All others are left to make the best arrangements they can with the aid of the old law. But why should we not do more than *empower* certain owners? Why should we not *help* all? The defect is manifest.

In the next place, even this power to enter into agreements is confined to the cases of *agricultural* leases. But why is a joint and voluntary power of improvement to be confined to cases of cultivation? Are there in Ireland no river fisheries—no mines—no quarries—no plantations—no bleaching-grounds—no water-power—no turf-bogs—no other sources, in the reproductive development of which the Landlord and Tenant have a joint interest, and ought to be enabled to act in concert? Then who is to draw the line between what is and what is not an *agricultural* lease? The distinction may, perhaps, be required for some purposes. But it is quite inapplicable here. Surely, the powers of improvement ought to be made commensurate with property itself, and with all its sources of wealth.

In the next place, this system is applied only to the case of improvements to be made at the expense of the Tenant. There is no provision whatever to regulate the case which is likely to be the most common one—that of the Landlord making the improvement at his own expense, in consideration of the Tenant's agreeing to pay an increased rent! All this subject is left to the tender mercies of the old law. It is quite true that another Bill provides for an increase of rent;

but it has no application to a case of voluntary agreement.

Of all the defects, however, of this Bill, the greatest, perhaps, is the absence of any provision for giving to the Landlord, who may have paid compensation to the Tenant, a claim for contribution over against the person who may possibly succeed to his estates before he has been remunerated by the improvements. It may happen that the day after a Landlord has paid the compensation, and taken the improved land in its place, both land and improvements may unexpectedly pass to another without his being able to follow them. It is possible, indeed, that his estate may last until he has been recouped out of the tenement. But the alternative is also possible; and it would be an injustice to him not to give him a claim running with the land. The sound principle is, to insist that every successor to the estate shall be made to contribute to the outlay, in proportion as he shall reap its fruit. This can be done by treating each person who actually pays compensation as if he were the original Tenant, and by giving him the same graduated rate of compensation as the original Tenant would have had at the same time, in case his tenancy had so long continued. We thus attach the compensation to the improvements, and not to the persons. Without this what Landlord would run the risk involved in a voluntary agreement? The *sic vos non vobis* feeling would restrict this Bill, already so much otherwise restricted, to the cases where there was no possibility of the Landlord's estate being determined.

In another point of view, too, this defect is calculated to be very prejudicial. Under the 44th section, the Landlord has the option of leaving the tenant in possession rather than of paying the compensation. If any uncertainty should overhang his own estate, he would of course do so. The consequence would be that the tenancy, no matter how injurious it might be, would be allowed to run on, perhaps to the detriment of the property, in order that the question of payment might only arise as between the Tenant and the successor to the Landlord's estate. This, however, is only one of the many absurdities which start up on all sides when we depart from the strict rules of consistency to follow such devious paths as those along which these Bills would lead us. What can be more devious from consistency than to give the Tenant a right as against each successor to the Landlord's estate; but, when the Landlord has taken the place of the Tenant, to refuse him the same right, as against the same persons, which the Tenant would have had! Thus, in four of the most important features of a voluntary system, the Bills and the measure prepared for Sir William Somerville are essentially different.

Widely, however, as the two schemes separate from each other as to their area and mode of operation, they approach each other somewhat in respect to the machinery necessary for carrying out their respective principles. The Civil Bill Court is adopted by both as the tribunal for deciding the fact of completion, and for thus settling the basis of the right to compensation as agreed to be conceded. The earliest trace which I can find of

this proposition is in a document prepared in 1850, not as a complete measure, but as a suggestion of a mode of getting rid of one great difficulty of the general subject then pending—the machinery difficulty. It is sound in principle, and, wherever found, it has been wisely followed. But it has been here combined with another agency which appears to me to be very objectionable—the intervention of the Board of Works. The same objection lies to all the Bills, and with still more force to the others than to this. Centralization is valuable in all cases where it is desirable to have prompt and concerted action. It is also necessary where the public money is to be spent. But where the sole question is between a Landlord and his Tenant, as to the expenditure of their own private means for their own private benefit, the Judge of their County Court, or a jury of their neighbours, will be a far more suitable engine than a central body. The Chairman of the County would be much more likely to understand, and therefore to protect, the interests in existence or in remainder, than the Chairman of the Board of Works.

The measure so often referred to was not open to these criticisms. It proposed a system of voluntary agreement of much simplicity, and yet as wide as property itself. Its plan here was in strict keeping with the plan adopted for leases. The proposition was, that all owners should be enabled by the same simple means to enter into agreements for improvements, so that the claim to compensation or to an increased rent should be valid within the bounds of the Landlord's estate; but that, where the agreement should be made subject

to certain restrictions, such claims should be valid beyond the bounds of the Landlord's estate. This system, too, did not contain any of those features which I have noticed as involving defects or wrongs. It was based upon the sound principle that the claim to compensation should always attend the possession of the thing improved, until exhausted by time. It is an honest and a wise principle, and its establishment would stimulate all to join in the general improvement of property.

We must now pass from the subject of voluntary action to that of compulsory compensation, as to which we have two Bills. I will take up, first, that for giving the Tenant compensation as against the Landlord. There is no analogous function in the measure designed by Sir William Somerville and me, as it was based upon the principle that no proprietor ought to be made liable to any pecuniary obligation, not voluntarily undertaken. We have therefore here no features for comparison. But it may be instructive to dwell a little upon some of the curiosities of legislation, which this Bill proposes—as showing some of the latent dangers of multifold Bills and multifold language.

Supposing that its general principle were agreed upon, as being good instead of being bad, the first objection which would arise is the very partial field to which its operation is confined. This operation is to be both prospective and retrospective. With respect to the former, the 3rd Section only empowers Tenants from year to year, or for a less term than 25 years, to make improvements and claim compensation. But why not Tenants under leases for lives—so com-

mon in the south of Ireland—and Tenants for longer periods than 25 years? These are the very cases, in which one would suppose, that the risk of the claim being least, the objection to its concession would be least also. Why should a Tenant for one life be denied a right given to a Tenant for seven years—terms usually deemed equivalents? Thus the Bill is not even-handed.

Narrow, however, as would be its professed area, it so happens that its operation even there would be almost wholly annihilated by another somewhat curious provision. Recollect that this Bill is only made applicable to "Tenants," and that the sister Bill provides—by its glossary—that a Tenant shall mean one who holds either under a lease or a contract; and—by its 4th Section—that every contract of Tenancy shall be in writing. To hold, therefore, from year to year would not entitle the person to proceed under this Compensation Bill, unless he should also hold by writing. The general law would of course govern the special law. But how many Tenants from year to year, or for less than 25 years, would be to be found in Ireland under contracts in writing, if this Bill were in force? Not one. Thus the new general law would defeat this Bill, and this Bill would in revenge defeat the general law, which professes the policy of having all Tenancies defined in writing. No Landlord would grant contracts in writing, and we should thus continue the old vicious system of Tenancies by operation of law. This result will also illustrate what I have urged as to the danger of using inconstant language in Acts of Parliament.

Even if the Bills did not contain these latent seeds of destruction, it seems very certain that no Tenant of the fugitive class contemplated by that now before us would venture upon the course offered to him. Assuming for a moment that he could see his way through the complicated superintending machinery imposed upon him, he would know well that his Tenancy—though it were such a contract in writing—would not long survive his first move. His notice to improve would at once rebound in the new shape of a notice to quit.

Let us next turn to the retrospective provision of this Bill, as it is one of great importance. Now this is not by half so terrible a clause on the one side, or so tempting on the other, as it might at first seem to be. In the first place, though it professes to extend a benefit to any—that is, every—Tenant, who shall have executed improvements before the passing of the Act, it does no such thing. Look to the Glossary, and you will find that the word "Tenant" is not to mean any Tenant except one from year to year, or for less than 25 years! Thus the prospective and retrospective action of the Bills have exactly the same nominal field. The latter is not indeed subject to the further limitation as to a contract in writing, as this only applies to those who should be Tenants before the passing of the Bill. Its field, however, would be very narrow and very unequal. Here it may fairly be asked, why were not these two Sections similarly worded? Why does the prospective clause, which touches no existing right, limit itself, whilst the retrospective clause, which touches the rights of thousands, goes forth without indicating

that limitation which half the readers of the Bill would never think of looking for in the Glossary? Then the pamphlets speak of this Section as if applicable to all Tenants who had made improvements. Really the practical men, who have been studying these pamphlets instead of the Bills, had better look sharp. They are not up to half the traps for the unwary, which a little practical examination of the Bills themselves would disclose.

Upon the principle of this Section I will not here dwell, as I am supposing it to be conceded, for the sake of argument. It is identical with that of Mr. Sergeant Shee's Tenant-Right Bill. This identity is fairly claimed by Mr. Crawford, in his recent Letter to the Down farmers. He rejoices that the principle, for which he so long fruitlessly contended, has at last received recognition, as well through the second reading of his own Bill, as through the second reading of Mr. Napier's Bill — that the Bill which last Session was "in his hands considered unworthy of future consideration," has been placed side by side with Mr. Napier's Bills—that "its second reading has now been recorded on the votes as being passed unopposed, and the principle of the Bill virtually affirmed by the House of Commons, as strongly as the second reading of any Bill can be supposed to indicate the assent of the House to its leading principle." Mr. Napier's Bill indeed falls into the inconsistency of only conceding within certain limits what, if conceded at all, ought to be given without any limits. If the Tenant is entitled to compensation within one period, he is equally entitled to it

within any other period however long, if he can only show that his improvements are still unexhausted. Grant the principle as far as Mr. Napier's Bill goes, and you must grant it the whole length of Mr. Crawford's Bill. You cannot consistently grant a Tenant only a fraction of a right. Right is indivisible. You may restrain its exercise altogether, but it cannot be divided without inconsistency. Once turn the relation of Landlord and Tenant into a commercial partnership, and it must be without limit as to responsibility on each side.

There is another difference between the two Bills in this, that the one gives the right with but little guidance for its measurement, whilst the other gives it with the most minute rules for that purpose. The Tenant-Right Bill has at least one merit—that its purpose is plain. No one can mistake its object or its operation. But no one can compare the two without seeing that the propositions of each resolve themselves into the same simple problem—to find what was the value of the Tenement, with reference to fair rent and prices of produce, *before* the improvements, and what is the value, with reference to the same considerations, *after* the improvements. The calculations under each Bill must go through the very same processes in estimating rents, prices, and values. What is implied in the one is expressed in the other. Mr. Napier only sets the sum. But Mr. Sergeant Shee both sets the sum and shows us how to do it. Both, however, involve us in the inextricable difficulties of an *ex-post-facto* valuation, of which one ingredient is un-

known. How is the first term of the calculation to be discovered—the original condition of the land improved? You may find it for houses, but you cannot find it for land. The plough and the harrow—nay, nature herself—will have long since obliterated all traces of what these once were, and both calculations must break down. Neither of the Bills show us how to find out a quantity which both assume to be known; but which is as difficult of access as the root of a cubic equation, and yet it is the basis upon which every competent valuator must proceed.

I will say nothing as to the four years' limit of value, because the present meaning of the Bill is attributed to the printer—the usual scape-goat for many a sinful clause. I cannot leave this Bill, however, without remarking how much its field of operation, both prospectively and retrospectively, would be further restricted by the long list of exempted subjects. These too are not very easy to be defined. Who is to decide what is a "Town Park"? what, "Accommodation Lands"? what, lands let "above the ordinary letting value"? what, buildings built in a "permanent or durable manner"? what, "lands let for a special or temporary purpose"? what, "thorough Drainage"? Was there ever such a region of doubt and litigation? But the most absurd restriction of all is, that the Tenant is not to have compensation if it happens that all his lands do not lie together! Although he may improve his Black acre and also his White acre, if some one else's Green acre comes between them, there is to be an end of his claim in respect to either! But all these ab-

surdities and difficulties are the unavoidable lot of the compulsory system. Once put the parties into hostile position, and you must measure the ground scrupulously, and mark the barriers, and lay down the most minute rules of action, otherwise there may be foul play.

I should go deeper into this Bill if I thought it possible that a British Legislature would ever sanction its general principle. But it never will, because that principle is radically unsound. What! pass a Bill of which the author, in his published speech, admits that "his own opinion was, that perhaps the power thus given to the Tenant might in some cases be abused." But surely you ought not to pass a Bill which would admit the possibility of even one solitary case of abuse. It is true, that the many restrictions upon the area of its operation would squeeze its abuses into a very narrow compass. But the hardship would not be the less upon those not thus saved.

The only further remark I will make upon this Bill is, that it is open to the same serious objection—and in a greater degree too—as that urged to the Leasing Powers Bill, that neither of them gives to the Landlord, who may be obliged to pay the compensation, any claim for contribution over against his successor in estate. Under the voluntary system, he of course runs this risk with his eyes open, and cannot complain; but here he has no volition. He must pay the compensation to-day, though to-morrow he may see the thing for which it was paid—its equivalent—transferred to another. Is this wise, under a voluntary system? Is it just, under a compulsory one?

Let us now come to the second compulsory Bill—The Land Improvement Bill—the last of the three which make up the proposed quota of legislation on the subject of compensation. This Bill has two functions. The one is to afford facility for borrowing money; the other to regulate the application of that money to improvement. The former is, however, a very diminutive function indeed—though it was taken as the characteristic of the Bill. The introductory explanation certainly gave the impression that its main object was to promote loans of money. There were hints about the Bank of Ireland coming down with large sums. One almost heard the pleasant, though somewhat distant, clinking of sovereigns. But it is far indeed from being a money Bill, or anything like it. It is but the Drainage Act over again without the money. It does, indeed, make a certificate of the outlay a first charge, and it is true that this certificate may be assignable. But we must still resort to some further assurance—some written agreement drawn from the depth of the law of contract. I suspect, however, that the Directors of the Bank—all very shrewd men—would not lend five pounds upon such a security. What commercial body would lend money to be repayable by instalments in twenty-one years? What private trustee ought to lend trust-money upon so transient a security—though authorized and invited by the Bill to do so? In either case, it would be a speculation by which no profit could be made, but by which everything might be lost. It may be all very well for the State to lend money repayable by instalments calculated at a low

rate of interest; but no Bank or individual would do so. The motives in the two cases are opposite. Commercial transactions will ever be governed by motives of interest—not of national policy. Then observe that this Bill has no application to the case of a voluntary agreement. If it is to supply money, it is here or nowhere. But if we are to have a Bill to facilitate the loan of money, let it be of universal application, and complete for its purpose. It might be one of extreme simplicity. This object, however, lies outside of the relation of Landlord and Tenant—our present subject; I only notice this one of its features because it was at first understood to be the principal one. It is not so. It contains another far more serious function.

The Land Improvement Bill is in principle the counterpart of the Tenants' Compensation Bill. It enables the Landlord to effect certain improvements, with money procured wherever he can get it, and to charge the land with a countervailing annuity or rent in lieu of the expenditure. This would be all very fair and very useful if only applicable to lands in the actual possession of the Landlord. But the power is extended over all lands, whether let or not let. The consequence is, that the Landlord and the Board of Works might enter and improve any tenement they please, and then the Board of Works is to fix an increase of rent for the Tenant to pay in consideration of improvements to be made, whether he may like them or not! Talk of freedom of contracts! How long would they be free after they had ceased to be sacred? This Bill would, in principle, violate every contract in

Ireland. No tenant would be safe. His objections to its operation would of course be heard. But might they not also be over-ruled? What would be said of such a proposition of a law for England? Once introduce such an agency between Landlord and Tenant, and you can form no estimate of the consequences. It has not hitherto been a very lucky agency. Take care that a Rent-sickness may not attend its operations in one case, as the "Road-sickness" did in another. Recollect that this Bill is unconfined in its application. It is strictly an *epidemical* Bill. Its principle, too, is exactly the principle of the Tenants' Compensation Bill, only taken in reverse, and applied without any limitation of area. The Landlord who objects to bear even the risk of compensation for improvements made by his Tenant is here enabled to make the Tenant bear the certain burden of a rent for improvements to be made by the Landlord. Thus whilst no power is given to the parties to enter into a voluntary agreement for an increased rent, as already seen, we have here a system of compulsory rents made to extend over all property. This is the engine which is to come into force the moment a Tenant moves under his Bill, for both Bills make a counter-move under the one fatal to a move under the other.

I am inclined to doubt much whether Landlords would wish for such a preference as here offered to them. There is too much of it. It would fail from its weight. They know well that it is only by unrestricted action that they can meet unrestricted competition—and that they never can have unrestricted action whilst there is

a feeling of compulsion between them and their tenantry. They must pull together. If they are to have a clear stage and no favour, they must also have a clear stage and no fear. From this neither party will be exempt, so long as the dread of the Tenants' Bill should hang over the Landlord, and that of the Landlords' Bill over the Tenant.

Such are some of the considerations of inequality, inconsistency, and impolicy which a glance at the operative provisions of these two compulsory Bills must suggest. Some, however, may here ask, how it is that the main principle upon which they are based does not accord with the propositions of the Book said to express their author's views? It is true that, from the use of a very precautionary style, we have not such clear and peremptory conclusions there upon this as upon some other branches of the general subject; but still a conclusion is come to in favour of a law of compulsory compensation—though upon the condition that it shall only prevail in the absence of an agreement to the contrary. It is said that—"*If* the Legislature finds, as indeed few will deny, that in the abstract the Tenant who expends his money and labour on the land has a right to benefit by those improvements which that money and labour have effected, and that it is wise to convert that moral right into a legal right, nothing can be more easy than to establish a general law making an honest recognition of this principle of justice, and to let those who do not like it make agreements for themselves."

What advantages such hypothetical legislation would have, or why, if the principle is good, the law

should not act in a positive rather than in a negative sense, it is hard to see. The proposition is likened to that of the Statute of Distributions, which makes a will for those who die intestate. But the comparison is fallacious, as there is no existing obstacle to the free operation of that Statute. It only deals with an individual thing, whilst its principle, if applied to a law of compensation, would have to deal not only with a relation of parties, but with existing interests. How are contracts now to be made to over-ride existing leases? Such a law could not, therefore, have any just application to them. In all other cases its probable effect would be, that half of Ireland would be ejected and re-let under contracts disembarrassed of its obligation. But however this may be, it is quite clear that the law proposed by the Bills is not of the nature above contemplated, for it is about as direct a law as could well be conceived.

With respect to the principle of compensation itself, the passage above quoted, though beginning with an "if" of some significance—a figure of speech according to the latest Court fashion—yet both in itself, and when taken with other subsequent passages, yields the conclusion, that, upon the supposition of the law being of a negative nature, compulsory compensation ought to be conceded. The form of its concession is then discussed. When, however, we come to the consideration of the persons who ought to be entitled to compensation, we have the singular conclusion, that it ought to be extended to Tenants of a somewhat permanent tenure —the very class to which it is denied by the Compen-

sation Bill; but that it ought not to be extended to "Tenants having an interest shortly terminable"—the very class to which it is conceded by the Compensation Bill! For surely if any Tenancies are shortly terminable, they are those from year to year—the chief object of that Bill. It is not very easy here to reconcile the first opinion with its recent expression.

The manner in which the measure designed by Sir William Somerville and me, proposed to deal with the Tenant's claim to compensation for improvements, when not otherwise provided for by a voluntary agreement, was very different from either of the foregoing plans. The Tenant's moral right either to the improvements, or to their value, was freely conceded, not in the sense of an "imperious necessity," as put by the Book—but as an original moral right. The problem to be solved was, how to concede that right, first in a practical shape, and next in a shape which should not trench upon the right of others. The essence of the method adopted was the preservation of the Tenant's *right of property* in all additions to his tenement; and it was adopted with the conviction that, by keeping that principle steadily in view, the more convenient result of a money compensation would surely follow. Here the Bills and the measure went upon opposite principles—the former violating the rights of property on one side, in order to effect compensation for the other—the latter sustaining the rights of property on both sides, in order to effeot the same object by voluntary means, as we shall presently see.

The first step towards this was to draw a clear line

of distinction between those things which the law now deems the property of the Tenant, and those things which the law now deems the property of the Landlord. The former may of course be removed by the Tenant without restraint; but the latter require a special treatment. It was proposed to vest in the Tenant a right of property in these, and to give to him a means of realizing that right, so far as is practicable in the nature of things.

Now the improvements which may be made by a Tenant upon his tenement, after the commencement of his tenancy, are clearly of two classes. The first are those which are incorporated with the soil—such as draining or manuring. The second are those of a distinct nature—such as buildings or other erections.

With respect to the incorporated class, it is impossible to secure to the Tenant a right of property. Its objects are lost in the soil. If such a right were legalized, it could only be realized by commuting it into a money compensation, which would be to throw upon the Landlord a pecuniary obligation not voluntarily undertaken, or, in other words, to violate his rights of property. All idea therefore of attempting to legalize compulsory compensation for that class of improvement was abandoned. Nor was it considered that any wrong was thus really inflicted upon any one. It was felt that improvements of this sort really belong to the proper use of the thing let, namely, a wholesome, renovating use—that they are, from their nature, of quick return, and remunerative within any period of tenure within which the Tenant ought to be allowed to specu-

late, except at his own risk—and that if he takes the property of another, and, for his own advantage, melts down, as it were, his own property into it, he ought not to complain if he is not able to extract his own again. This subject was therefore left wholly to voluntary agreements. But depend upon it that the right, even if conceded, or if practical, would be of little value to the Tenant, as all Landlords, who would not enter into voluntary agreements, would create tenancies only upon the condition of an abandonment of such a right. On the other hand, it is equally certain that the cases would be few—and not worth the national violation of a great moral principle—in which the Tenant, having money, and being willing to expend it upon improvements of a reproductive nature, the Landlord would refuse to join in securing him against risk.

The other class of improvements, being tangible and removable—even though their removal would cause their destruction—may be differently treated. The measure I have spoken of proposed to allow the Tenant to register improvements of this sort, and thus to preserve his right of property in them—subject only to the Landlord's power of pre-emption. The working of this system would be very simple. If the Landlord refused to join in a voluntary agreement for compensation to the Tenant, the latter could thus proceed independently, and secure his right of property.

With respect to the principle of a registry, I ought here to say, that I can find no prior suggestion of its use, in the sense in which it was here used. The Book indeed, following others, applauds its principle

as to trees, and recommends the consolidation of the existing Acts—though no trace of them are to be found in the Bills. It also, in like sequence, suggests its use as a collateral check upon the way to compulsory compensation. But I find no suggestion of its use as the means of securing a right of *property* and *removal*, as adopted by the general measure, in full development of the principle of the Irish Timber Acts.

Its use in this sense presents the agreeable feature, that, in every case in which a compensation would be just under any other system, it would result under this. The Tenant's power of removal and the Landlord's power of pre-emption would act as two antagonist forces to bring the parties to a sale. The greater comparative value of the things registered, if left upon the tenement, and their smaller comparative value if removed, must combine for this result. If they cannot agree, a jury would fix the proper price, and thus interpose a standard of value, from which neither party could recede without loss. Thus, by a faithful observance of the rights of property on both sides, we come round in the end to a money compensation. But it is not a compulsory one. It is granted voluntarily, in deference to a preserved *right of property*, which includes a *right of removal.*

Then, whenever this compensation should be paid, the registry would still stand good for the Landlord, who should have paid it, and in case his estate should be determined, his right of property would survive, leading again to compensation in his favour, and so on in strict parallelism to the system of voluntary agree-

ments—the right of property being made to run with the improvements.

You will observe that this simple system requires no limits of area, except those of property itself, or of value, except the interest of the parties. It is of universal and unlimited application—avoiding all the difficulties of fixing the value which a house shall bear to the number and value of the acres in the tenement—of deciding what shall be the subject matter of the claim, or whether the purpose is temporary or otherwise, or what shall be the Tenant's interest, or any of the hundred other matters, which we must fix and follow, the moment we depart from a voluntary system, and abandon the guidance of equal justice. Here we have a system applicable to all tenures—all areas—all purposes—all values—all conditions and circumstances, under which the relation of Landlord and Tenant can exist—a system equally just to the Landlord as to the Tenant—honest in its purpose, and therefore bold in its action. It would give far more to the Tenantry class than any scheme yet proposed, and it would do this in a way of which no Landlord could justly complain, because if he will not consent to compensation, the Tenant would only take away what he himself had placed upon the tenement, and in which the Landlord has no *moral*, though he *now* has the *legal*, right of property. Removal would certainly be a very rare case.

Another, perhaps, somewhat singular-sounding recommendation of this system is, that it would have very little direct action. Its indirect action would, however,

be very important. The right of property which it would vest in the Tenant, and which it would secure to him by this simple means, would place him upon the same level of rights as the Landlord, and would thus at once lead to voluntary agreements for all wise or moderate purposes. Its direct action would be banished to the more speculative fields. But, for all reasonable purposes, it would have an influential more than an actual operation, and would thus throw the parties into a more beneficial relation—namely, that of parties to a voluntary agreement.

It is perhaps under the Fourth natural head of the subject—that of Remedies—that the Bills will be found to differ most widely from the measure prepared for Sir W. Somerville. The latter measure adopted the simple principle of a single tribunal of first resort—but of course subject to appeal—for the decision of all questions arising between Landlord and Tenant, without reference to the value of the thing in dispute. Nothing of the kind has been attempted by the Bills. Nor can I discover any broad suggestion of its expediency in the Book. Under the head of Ejectment for non-payment of Rent, the idea was indeed nearly run down, but not caught. It is there shown that, in such a proceeding, the "rent account" ought to be "the only question," and this idea is traced out to the plain inference, that there is no reason "why the jurisdiction of the superior courts on this subject, except in cases of appeal, might not be safely abolished, and the statute-book relieved of a mass of enactments, and those engaged in the profession of the law of an

accumulation of cases, which it would take a considerable portion of one's life thoroughly to digest and understand." But nothing of the kind has been done by the Bills—even as to the rent account.

Now you will observe that it is the singleness of the question at issue which affords the facility for having a simple and therefore a single tribunal for its decision. It is no more difficult to decide upon a claim of £1000 than upon a claim of £10. Throw overboard all the technicalities which it now requires so much time and so much legal learning to clear away, and you at once reach the possibility of a local tribunal of extreme simplicity. Thus the above conclusion follows at once from the fact of a simple question being at issue. Now what is the authority given for this idea? It is neither more nor less than the evidence given to the Receiver Committee of 1849, by the humble writer of these pages. But this was only a fraction of the idea which existed in my mind, and which I had applied to the special subject of Receivers, then under consideration. The idea, taken as a whole, leads at once to that of a single tribunal for all purposes, because it requires no great discrimination to see that every question which ought to be allowed to arise between a Landlord and a Tenant can be made as simple as a question of account—nay a great deal more so—and that thus we ought to have a tribunal as single as the subject submitted to its decision. It is not surprising that the conclusion drawn by the book was not carried out by the Bills, even in the small province of ejectments for non-payment of rent,

because such a step would be somewhat hazardous, under a system as promotive of litigation and its causes as their provisions would be; but it would be perfectly safe under a system which would cut up by the roots the causes of dispute—reduce every question to the real merits—and thus annihilate half the litigation which now prevails in Ireland.

Then again, the Bills have made no proposition for simplifying the Form of procedure, whilst the measure prepared for Sir W. Somerville proposed one single form of process for every variety of dispute and every branch of the same case. In this respect it resembles somewhat the lately introduced Law Procedure Bill for the Superior Courts; but it carried the principle of unity much further, and was as much in advance of that Bill in simplicity as it was prior in time. It went upon the idea that what is wanted is not a factitious, made-up remedy—bolstered up with fictions of rights of entry and of imaginary reversions—but a remedy of direct application, and addressed at once to its proper object by its own force.

Here, then, in this matter of the fourth great head of the general measure designed by Sir William Somerville and me—but much more than its fourth part either in length or importance—it bears not the slightest resemblance to the Bills, but is founded upon the full extent of an idea traced by the Book itself to the individual who was supposed to have copied the latter! The subject itself, however, is of great importance, as it involves a vast law reform. It offers what all desire—a simple instead of a compound tribunal—a compre-

hensible instead of an incomprehensible remedy for every wrong.

What a contrast such a system presents to the confused machinery of the Landlord and Tenant Bill! Here we have a saving of the old concurrent jurisdictions of the Superior Courts and of the Civil Bill Courts, in some cases where the value of the subject matter rates below £50, in some where it rates below £40, and in others without any restriction as to value. Hence we have the extraordinary anomaly that if a Tenant breaks his covenant by overcropping a farm—held at a rent of £1000 a year—the ejectment will lie in the Inferior Court, whilst if he breaks his covenant—by non-payment of a rent of £51 a year—the proceeding must be in the Superior Court. Again if a Tenant's compensation exceeds £40, he is to recover it before eviction in the Superior Courts, but after eviction in the Inferior Courts! These, and a thousand like incongruities, must attend a jurisdiction which is made dependent upon value rather than upon the legal nature of the dispute. Then the Bills also retain the objectionable option to the Landlord as to the Court in which he will proceed. The Bill is constructed in such manner that the jurisdiction of the Superior Court is assumed to exist in all cases, and there is no enactment as to them—though whence they were to obtain their jurisdiction if these Bills really contained the whole law does not appear—and there is then permission given to the Landlord to proceed in either the Superior or Inferior Courts, in certain cases of value. He can thus select the Court of attack, whilst the Tenant

cannot select the Court of defence. On that ground alone it is objectionable. In some few cases, indeed, the jurisdiction is confined to the Inferior Courts; but the general rule is the other way.

That the Bills have no design to simplify legal procedure will be further evident if you observe that not only are some new remedies given for the first time, but all the old varied forms of actions of ejectment, of covenant, of use and occupation, and for damages by waste, are faithfully preserved. They are all to live and flourish as of old. Little is done to simplify their action, though something is done to attract their application. The 99th section declares, that there shall be no need in any case to prove a reversion or right of entry—the old condition of their application. This section is a curiosity, for it prudently enacts that it shall not be necessary to *prove* certain reversions and fictions, which its marginal note says are to be dispensed with, but which an earlier section of the same Bill says are to be deemed to *exist* in every case. Why one section should give "the balmy corrector of ills which the other had brewed" it is hard to see. But however puzzling these circumlocutions may be, the upshot is, that nothing has been proposed to simplify either jurisdiction or procedure—whilst much has been proposed which would render both more puzzling than ever.

Before leaving the subject of procedure in general I must remark, that the principle of a judgment by default, in cases between Landlord and Tenant, appears to me to be objectionable in the highest degree. Mr. Napier's Book recommended it; and the 109th section

of the Landlord and Tenant Bill adopted the recommendation. Now, judgments by default may be tolerated under other tribunals of slower movement, and where the same circumstances and consequences are not involved. But when it is recollected that we have here to deal chiefly with the less educated classes of society—the peasantry—and that the instant consequence of error is eviction from house and home, its introduction into a Court which is to adjudicate between Landlord and Tenant—and whose action is upon the peasantry—ought to be strongly deprecated. No question between such parties, as to the possession of land, ought to be decided either by form or neglect; every question ought to be decided by substantial and diligent examination.

Leaving now the general question of jurisdiction and procedure, let us look a little into the mode in which is proposed to deal with the purposes for which procedure is required under one form or another. Here, then, the Bills do not propose to alter the existing direct remedies for the recovery of rent. This is to continue recoverable by action in one Court or the other, according to its amount. In contrast with this, the general measure proposed a procedure in the Civil Bill Court—as the proper direct remedy for recovering rent which had accrued due within a certain period—obliging the claimant to proceed, at the joint cost of himself and the other party, in the Superior Courts for rent which had accrued due for a longer period. The object of this was to induce a speedy closing of accounts, and it does not seem to be an ille-

gitimate use to make of an expensive tribunal—to impose it as a penalty upon those who may by their neglect expose themselves to the need of resorting to its assistance. Nothing but some provision of this sort will promote the desirable object of wiping out old arrears. But the continuance of concurrent and optional tribunals would deprive us of this advantage.

With respect to the indirect remedy for rent by Distress, we must expect more or less of similarity between the two schemes, because both are imitations of the Scotch law of sequestration. The great difficulty, in the way of the introduction of this sound system into Ireland is the non-existence of a sufficient official staff for its execution. I ought, however, to say, with reference to the shape in which it was followed in the general measure, that this was framed with the full hope that it would be accompanied by an assimilation of the Irish system of sub-sheriffs to the Scotch system of sheriffs-substitute. Such a measure would be valuable for many other purposes than that now before us. At present the most delicate and painful function of the law—its execution—is vested in an officer who cannot legally serve for two consecutive years! This officer, too, is subject to very little control—none from any permanent quarter. He cannot, therefore be expected to work any system of execution with that care, precision, and humanity, which would attend the service of a less transient, more practised, and more responsible official. We shall never have a satisfactory system of laws until our Executive partakes somewhat of the continuity of our Judicial arrangements.

So far as the actual execution of the law of Distress, the two schemes use the same at present defective machinery; but they differ wholly as to what is to set the machinery in motion. The 66th section of the Landlord and Tenant Bill calls upon all "Justices of the Peace, Assistant Barristers, Sheriffs, Under-Sheriffs, or Coroners"—the whole *posse comitatus* in fact—to take affidavits and issue warrants to the Sheriffs and Under-Sheriffs to levy all rents in arrear. It does not appear how the Sheriff is to issue a warrant to himself, though, perhaps, the meaning is, that each is to issue warrants to the other—the Sub-Sheriff, for instance, to the High Sheriff! Nor does it appear how the Coroner is to hold his inquest upon Irish rents. Weighing all these little difficulties well, one must come to the conclusion, that the real meaning of this section is, that the Magistracy of Ireland are to be the motive power, and the Sheriffs the executive power. It seems, however, a great mistake to make the Magistracy the executioners of the new law of distress. The existing evil is, that the Landlord has the execution of the law in his own hands. We shall not remedy this by bringing forward the Magistrates to the rescue, for they are only the Landlords under another title. It would effect only a change of character, not of persons. Now the policy of extending somewhat the Summary jurisdiction of magistrates under the late Petty Sessions Acts was, in my mind, solely justified by the consideration that then, for the first time, it was made illegal to decide any case except at Petty Sessions and in open Court—that is, before the public. Here we should have

no such safeguard. The Distress warrant might be issued at any time or place. What a door would thus be opened—I will not say to favour—but to the suspicion of favour, or of its opposite! I am persuaded that the magistrates would to a man object to the imposition of so offensive a jurisdiction. Use the Petty Sessions Court if you please—now that it is a public Court—as a medium for various ministerial acts. For these it offers many advantages by its local publicity. But do not retreat from the safe position already occupied, and scatter again its members as so many independent authorities for executing that part of the Law of Landlord and Tenant, in which they themselves have the deepest interest, and which is the proper province of the County executive officials.

The very same machinery has been adopted for the prevention of Waste, and is, of course, open to all the same objections which exist to its adoption for distress—with the addition that, in case of waste, the idea of an unfair interference is rather more prominent, as the subject is more delicate, and the duty thrown upon a magistrate more of a judicial than of a merely ministerial nature. This new employment for the Irish magistrates appears to me most objectionable.

The only other branch of the remedial system relates to the recovery of the possession when the Landlord's right to it has accrued. With respect to this I have already noticed the fact, that all the old forms of remedy have been retained, so that we have the four ancient methods of procedure all separately directed upon their special objects. We have four different pre-

scriptions, when there is in fact but one complaint—at least but one cause of complaint. This appears to me to be founding procedure upon a secondary and not a primary principle. The general measure, on the other hand, was based upon the idea, that the recovery of the possession was the primary object, and it made the causes of action matters of evidence.

We thus obtain a single process applicable to every possible case of right—this simple change of aspect enabling us to consolidate all procedures into one, and thus to extricate the proceeding from the manifold errors and litigation which must attend a manifold process.

I am surprised to find that the Bills do not appear to make any alteration as to the law of redemption, after execution, in cases of Ejectment for non-payment of Rent, inasmuch as the evils of that principle were noticed in Mr. Napier's Book. It is useful to few—pernicious to many. Having, however, upon another occasion, endeavoured to show this, and also that the true principle to adopt was to lengthen the time before execution, if you please, but, at all events, to make the execution final, I will say no more upon the subject here. All must agree that whatever time may be allowed for repentance, the law ought to be steady in its purpose and sure in its steps, when that time is gone.

I must close this subject of procedure with a few words as to a kindred matter. It was proposed by the general measure to clear the way for a single tribunal and a direct remedy, by withdrawing from the

Assistant Barristers' Courts all jurisdiction in Ejectments upon the title. This is an action which has been little used, except as an indirect remedy, for which it had certain technical recommendations. I do not find that any clause in the Bills has been aimed at its abolition, though I do find its condemnation recorded in Mr. Napier's Book, in very significant language. Referring to a Bill then before Parliament—which, however, was a Bill not for altering the law, but merely for consolidating existing provisions—I find these words: "We regret to find that, in the Civil Bill Act of this Session, 1851, introduced by her Majesty's Attorney-General for Ireland, it is proposed to re-enact this most objectionable and incomprehensible measure." The policy of so doing had been previously "fearlessly" asserted—though the possible causes of fear do not appear—and yet the Attorney-General of 1852 follows, upon a far more appropriate occasion, his predecessor of 1851, and does nothing to remove the object of his ex-official aversion. I hope that the next Attorney-General will be more consistent. At all events, I hope that—if he has printed a Book, even for private circulation—he will make his Bills conformable to its propositions.

Before taking leave of these Bills I cannot but express my regret that the schedule of Statutes proposed to be repealed was not produced. It was said that no less than 260 Statutes were to be superseded upon going into Committee—though where the Committee could find more than half that number of live Statutes I cannot think. Where were they found? Who num-

bered them ? Can they have been counted, first, as to the Landlord, and then again as to the Tenant ? This would just double the real number. Surely there must have been what the French mathematicians call a "*Double Emploie*" somewhere in the calculation. Or was it intended to revise the repeal of all Acts hitherto repealed—to begin at the Conquest and to kill the slain all over again down to the present time ? I should like to have seen that schedule. But, of course, it is now to be numbered with the things that are not. We should thus have been able to know for certain whether it was really intended to leave out many existing Acts. I have already said, that I do not see the Registration of Timber Acts anywhere represented in these Bills. Neither do I see any substitute for the late Acts aimed at alleviating the miseries of the clearance system—checking the unroofing of houses—or providing relief for the destitute ; and yet these are essential features of a Landlord and Tenant Code. The Bills, however, seem to stop short at the adjudication. Nothing is done as to the execution. But if we are to have a Statutable Code, why should it not be complete ? Why should we not have the end as well as the beginning, and see the tenancy out to its close ? This, too, would probably afford an occasion for somewhat softening the features of the eviction process in its concluding stage. If we cannot take off any of its harder edges, let them at least be seen, that they may be avoided where escape may be practicable.

With respect to further details of these Bills, I will only add, that it is not to be supposed that the diffe-

rences which I have pointed out are those alone which exist between the two schemes. The inference which any one must draw who will carry on the comparisons which I have begun is, that these differences will abound with an increasing ratio as he descends further into particulars. My object was only to show that the two schemes differ as to all those fundamental principles which are calculated to characterize or give efficiency to the law. It appears to me, and does, I have no doubt, appear to others, that the Bills do little, if anything, to benefit Tenants, and very little more, if anything, to benefit Landlords, whilst they are calculated deeply to injure both in various ways—but above all, by violating a right, the sacred observance of which is essential to both classes. Incidentally to my purpose of showing this, I think I have also shown, that Mr. Napier's Bills differ in many essential points from the Book claimed as expressive of his opinions, and that the measure prepared by me differs from that Book still more widely. What then becomes of the assertion attributed to Lord Derby, that the measure can differ but little from the Bills, inasmuch as it was prepared upon the Book? The fallacy was the assumption of a supposed common term. It was, no doubt, natural to suppose, that the Bills followed the Book; but there was no reason whatever, beyond a few immaterial points of resemblance, for the rash assertion, that the measure did so likewise. As for the supposed resemblance between the Bills and the measure, I will only say that, though they may approximate in title—in legal phrases—and in some practical provisions, they are in reality no more

like each other for any operative purposes, than the Bill of Rights is like a Bill of Pains and Penalties.

I have already suggested that such a great measure as I have had in contemplation—if not quite so urgently called for in England—would yet be as beneficial for England as for Ireland, and just as suitable for the one country as for the other. I would now make the further suggestion, that such measures ought to be united into one, and a single measure passed for both countries, as was done in the case of the last Act which touched the relation of Landlord and Tenant. You have here the occasion for united legislation upon one of the most important questions which affects both countries. Those laws which are good and necessary for Ireland must be equally so for England. It is true that they may take deeper effect in one country than in the other; but if they are just and beneficial for either, they must be just and beneficial for both. The question, then, is not one of justice or equality so much as of adaptation and operation. There are, of course, circumstances requiring different and separate legislative treatment in each country. There are the subjects of taxation, police, and others, usually made the objects of local Acts. But there seems no reason whatever why the laws which regulate the rights of persons and of property should not be identical. A single clause in any general measure would suffice to provide for all local specialities in its adaptation.

Even in the making of laws, many not inconsiderable advantages would attend the observance of that principle. The time of Parliament would be saved by

the non-existence of duplicate legislation. English law reform would not be in advance at one time, and Irish law reform in advance at another. Nor should we have it said, that Ireland was sometimes made a field for experimental legislation. We should thus steer clear of many adventitious obstacles. But you would gain something still more solid. You would have the undivided attention of the whole of both Houses of Parliament given to every original or amending Act. You would not see the Irish Members inattentive to English Bills, or the English Members indifferent to Irish Bills. Every Bill would receive that weight of consideration, which it has in theory, but which it seldom receives in practice. Then we should not incur the danger which now exists, and which may at any time be realized, of a minister strong with an English majority imposing upon Ireland laws, which that majority would, perhaps, not be so quick to impose upon England.

The fact is, that the Union will never be complete until you recover and establish its true principle. At present it is but a Union of legislators, not of legislation. Every separate Act you pass must tend to weaken its consistency and therefore its force—until you re-codify the laws, and make their incidence commensurate with their origin—making the people of Ireland see that they are really subject to the same laws as the people of England. Until you do so, you will never realize the well-known sentiment with which Pitt announced the proposition and promise of the Union:—

"Paribus se legibus ambæ
Invictæ gentes æterna in Fœdera mittant."

We are, no doubt, already upon the eve of great measures of law reform. The public mind is struggling anxiously and hopefully for them. They are alike the object of its wants and of its wishes. Do not then lose the opportunity—while the tide of public opinion flows with you—of carrying out the Union in the same spirit in which it was conceived, and of making our renovated laws commensurate with the united functions of the legislature by which they are to be passed, and the extent of the united territory to which they are to be applied.

I have the honour to be,

My Lords and Gentlemen,

Your obedient Servant,

WILLIAM TIGHE HAMILTON.

P. S.—As I find that the unwarrantable charge of plagiarism made against me by Mr. Napier in the House of Commons, on the 7th December, has recently been repeated in the Dublin University Magazine, I am constrained to notice it here.

The charge was, that "sentence by sentence, and paragraph by paragraph"—nay, that "whole passages and pages" of a pamphlet, in which I had explained the outlines of the measure prepared for Sir William Somerville, were taken without acknowledgment from the Book which expressed Mr. Napier's own views!

My answer is, that the assertion is wholly untrue. Not a sentence of the pamphlet was taken from that, or from any other, publication.

I have, both through the newspapers, and by letter direct, invited Mr. Napier to point out, if he could, a single page, passage, or even sentence, so taken. But he has not done so. I am, therefore, fairly entitled to class his assertions with those *fictions*, which, as we have seen, one section of his Bills declares shall *exist*, but which another section so cautiously provides that it shall not be necessary to *prove*. I am not aware, however, that any law has yet passed, to dispense with the moral obligation either to prove or to retract such a fiction as that to which I refer—petty though it be.

Nor can I refrain from here expressing surprise, that a Magazine which claims to be an arbiter of literary merit, should heedlessly lend itself to the propagation of an assertion, which the most superficial comparison of the two publications, by any one who understands their subject as well as their language, would have shown to be destitute of foundation. What! adopt the explanation given of Mr. Napier's opinions, as an explanation of mine, which are of so widely different a character. The assertion reduces itself to an absurdity.

THE END.